

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIAM IRVAN,
Petitioner,

v.

LORIE DAVIS, Director
Texas Department of Criminal
Justice, Correctional
Institutions Division,
Respondent.

§
§
§
§
§
§
§
§
§

No. H-12-1683

ADVISORY RESPONDING TO COURT'S MAY 3, 2017 ORDER

This is a federal habeas corpus proceeding in which petitioner William Irvan, a Texas death-row inmate, filed his federal petition attacking his capital-murder conviction and sentence of death pursuant to 28 U.S.C. § 2254. Pet., ECF No. 1; Amend. Pet., ECF No. 18. In December of 2013, this Court entered an order staying this proceeding until the conclusion of Irvan's state litigation and allowing federal habeas counsel to withdraw. Stay, ECF No. 42. On May 3, 2017, the Court ordered counsel for the Director to file an update on the status of Irvan's case by May 31, 2017. Ord., ECF No. 45. Counsel for the Director was not served with this order until June 13, 2017, at which time the order was emailed directly to the undersigned. The undersigned now advises the Court as follows.

Irvan's state litigation remains pending. The undersigned is not only the assigned Assistant Attorney General for the federal habeas litigation but has also assumed the role of District Attorney Pro Tem based on an ongoing conflict at the Harris County District Attorney's Office. The undersigned and Irvan's then-appointed attorney agreed to DNA testing before the state court and have proceeded with some of the testing. However, Irvan's appointed counsel withdrew from the case, as had previous counsel, and the lab is currently waiting for additional instruction from the parties. Irvan is currently without appointed counsel in any court. On May 3, 2017, the State, as represented by the undersigned, asked the state court to appoint counsel as required by state law. The undersigned has not seen any action from the state court on this matter. State law also requires a state court hearing on the evidence when the lab is through processing. Thus, the Director believes the stay should remain in place as it will take some time for the state litigation to conclude.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

ADRIENNE MCFARLAND
Deputy Attorney General
for Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

* Attorney-in-charge

/s/ Ellen Stewart-Klein
*ELLEN STEWART-KLEIN
Assistant Attorney General
Texas Bar No. 24028011

P. O. Box 12548, Capitol Station
Austin, Texas 78711
Tel: (512) 936-1400
Fax: (512) 320-8132
Ellen.Stewart-Klein@oag.texas.gov

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing pleading has been served by placing same in the United States mail, postage prepaid, on this the 13th day of June 2017, addressed to:

William Irvan
TDCJ-CID # 00999472
Polunsky Unit
3872 FM 350 South
Livingston, TX 77351

/s/ Ellen Stewart-Klein
ELLEN STEWART-KLEIN
Assistant Attorney General